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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CRL.M.C. 4540/2018 & CRL.M.A. 31584/2018

SANDEEP NANDA & ORS

..... Petitioners

Through: Mr. Rahul Sharma, Adv.

versus

STATE (NCT) OF DELHI & ORS

..... Respondents

Through: Mr. Hiren Sharma, APP for the State
with Inspector Vinod Gandhi, PS
EOW.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER

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14.09.2018

On the complaint of one Ravi Sachdeva, the first information report no 234/2008 had been registered by economic offences wing (EOW) of Delhi police on 24.12.2008 taking up the investigation into offences allegedly committed they being punishable under Sections 406/420/120 B of Indian Penal Code, 1860 (IPC). The investigation having been concluded, a charge-sheet dated 06.02.2013 was submitted against the private party respondents herein for offences punishable under Sections 406/420/120 B IPC. The Chief Metropolitan Magistrate before whom the matter came up, by his order dated 23.03.2013, took cognizance and issued process. The said order was challenged in the court of sessions by one of the persons summoned as accused, he being B.N. Gupta by petition (Crl. Rev. 101/2017). Similarly two others persons summoned as accused also brought a similar challenge by Crl. Rev. 193/2017. Both the said petitions were

disposed of by orders passed on 10.04.2018. The additional sessions judge, by order dated 10.04.2018, found fault with the order issuing process to the extent that it had included the offence under Section 420 IPC for the further proceedings observing that the order issuing process to the extent offences under Section 406/120B IPC have been invoked, was to be maintained.

The petitioners claim to be victims of the offences involved in the prosecution arising out of above-mentioned charge-sheet. Their grievance is that the revisional court has gone beyond the scope of the petition brought before it and has excluded the offence under Section 420 IPC prematurely, the question of charge being one yet to be considered by the appropriate court.

While there appears to be some merit in the grievance of the petitioners, it cannot be ignored that the revisional court in the impugned order (particularly para 40) has added that the Metropolitan Magistrate would have the “*liberty to frame charge in accordance with law without influence of this Court*”. It is trite that the criminal court where the matter is to be taken up for consideration of charge will have the discretion and the authority in law to apply its mind and frame charges for all such offences as are found made out from the material placed before it. Deficiency, if any, in the summoning order will not come in the way. The observations in the nature mentioned above by the revisional court while dealing with the challenge to the summoning order can never be treated as final, binding or clinching, the same being tentative in nature.

At this stage, the counsel for the petitioner submitted that he may be permitted to withdraw the present petition reserving the right to raise

contentions on the question of charge also under Section 420 IPC before the trial court at the appropriate stage.

The petition and the applications filed therewith are dismissed as withdrawn.

R.K.GAUBA, J

SEPTEMBER 14, 2018
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